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YELLOWSTONE WATER RESERVATIONS:
DECISIONMAKING BY A CITIZEN BOARD

Ted J. Doney, Frank Culver, Carole Massman, and Wayne Wetzel¹

ABSTRACT: The Board of Natural Resources and Conservation, which consists of seven private citizens, is empowered under Montana law to allocate water to future beneficial uses by establishing reservations. The first reservation requests sought more water than is physically available in the Yellowstone River basin where more than 30 applications were filed by numerous state and federal agencies and political subdivisions of the state for a wide variety of uses, both diversionary and instream. The problems and considerations confronting the Board in this difficult situation, the procedure it followed, the factors which shaped the decision, and the allocations finally reached are discussed in this paper, based on the results of a questionnaire completed by Board members. Also explored are broader questions surrounding citizen boards in general, including the ability to deal with massive amounts of information on complex technical and legal issues, their accountability, and their appropriateness as deciders of major natural resource allocations. Finally, state agencies are provided with suggestions concerning ways to both facilitate the deliberations of citizen boards and improve the quality of the decisions thereby reached.

(**KEY TERMS:** administrative decisionmaking; citizen boards; natural resource allocations; Yellowstone River basin; water reservations.)

INTRODUCTION

Resource allocation decisions in western states are highly debated and complex. Water, a critical resource once considered plentiful in Montana, is increasingly sought for a variety of competing diversionary uses such as irrigation, municipal, and industrial, as well as for instream flows to maintain rivers and streams as viable flowing hydrologic units. In some areas at some times, demand exceeds supply.

The proper allocation of water among these uses, all defined as "beneficial" under Montana law, requires difficult judgments. Nearly always the information base is less complete than desired. Future demands are uncertain, yet actions must be taken immediately. Tradeoffs must be weighed. Significant, long lasting, and widespread impacts can result, affecting and polarizing numerous people. Water allocations thus become political issues, and their administration increases governmental regulation and paperwork.

Decisions concerning resources have in some cases been delegated, under state law, to boards consisting of private citizens. It may be felt that citizen boards assure sounder

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decisions, perhaps because they are less susceptible to political pressures, or because they better represent public desires. Another possibility may be that citizen boards provide a dispersion of authority among several people of varied backgrounds, thereby preventing a concentration of power in one individual or agency. In any case, decisionmaking by a citizen board is common.

How does such a board operate when given responsibility in a difficult natural resource matter? To provide insight into this question, we have chosen as an example the Montana Board of Natural Resources and Conservation (herein called "Board") and its recent decision reserving the waters of the Yellowstone River basin in Montana. Some background information regarding this particular Board and this particular situation should be helpful.

THE BOARD OF NATURAL RESOURCES

The Board consists of seven citizen members appointed by the Governor for staggered four-year terms. The only qualifications specified by law are that one member be a licensed attorney and that all be "... informed and experienced in the subjects of natural resources and conservation." However, the Governor usually selects people who provide diverse geographical representation as well as a cross-section of interests, including agriculture, business, and the academic community. One woman presently serves on the Board; two members are former state legislators. Their occupations are a retired University administrator, a college science professor, a rancher, an attorney, a retired Soil Conservation Service employee, a businessman, and a retired teacher.

Statutes administered by the Department of Natural Resources and Conservation (hereinafter called "Department") define the quasi-judicial and other duties of the Board. Several of these also give the Board final approval authority in resource decisions of major significance.

For instance, Montana's Major Facility Siting Act requires Board approval for the siting and construction of energy generating and conversion facilities and large transmission lines. And Montana's Water Use Act includes a unique section entrusting the Board with decisions allocating water far into the future.

THE YELLOWSTONE WATER RESERVATIONS CASE

Under this law, state and federal agencies, as well as political subdivisions of the state, can apply to the Board to reserve water for existing or future beneficial uses, or to maintain a minimum flow, level, or quality of water.

Shortly after the Water Use Act was enacted in 1973, a number of large industrial water use applications were received by the Department. The Legislature perceived these applications as a threat to future agricultural and municipal growth in the Yellowstone basin and to the free flowing status of the Yellowstone mainstem. It responded by passing the Yellowstone Moratorium, which suspended action on applications for water in the basin for any use involving over 20 cubic feet per second or 14,000 acre-feet (af) of storage. In all, seven industrial use applications were suspended. The language of the Moratorium stressed the need to first reserve water for the protection of existing and future beneficial uses; in particular, emphasis was given to reserving water for agricultural and municipal needs as well as for minimum flows to protect existing rights, water quality, and aquatic life.

The first reservation requests, then, sought waters of the Yellowstone River basin, where potential conflicts between various users were apparent. More than 30 applications were submitted by 14 conservation districts, two irrigation districts, eight towns, four state agencies, and two federal agencies for a variety of uses: irrigation, municipal supply, stock water and recreation ponds, multipurpose storage, and instream flows for aquatic life, water quality, and levels needed for existing diversion structures.

Over a period encompassing several years, studies were performed, a voluminous environmental impact statement (EIS) was prepared, and a seven-week hearing was conducted. After final arguments were heard, the Board began its deliberations in a series of meetings and informal work sessions, faced with numerous problems and considerations.

- No precedents exist for water reservations, either in procedure or in substance.
- More water was sought than is physically available.
- Indian and Federal water rights exist, but are unquantified.
- Valid water rights initiated before 1973 are not completely known.
- The precise division of interstate tributaries under the Yellowstone Compact between Montana, Wyoming, and North Dakota is uncertain.
- Some portion of flow could be left unreserved for appropriation (by both those ineligible to reserve water, and those eligible for but not requesting reservations).
- Preference in use among reservations (in times of shortage) could be provided by varying their priority dates.

The Board's eventual reservation allocations basically gave all applicants a portion of their reservation requests. The eight municipalities requested an annual diversion of approximately 372,000 acre-feet and were granted about one-sixth of that total, or 61,000 af. Multipurpose requests for off-mainstem storage by the Bureau of Reclamation and the Department of Natural Resources and Conservation received 94 percent of the nearly 1.2 million acre-feet per year (af/y) requested. Irrigation requests by the conservation districts, irrigation districts, Department of State Lands, Bureau of Land Management, and Bureau of Reclamation were trimmed to a combined total of 655,000 af/y from the 1.2 million af/y requested.

The instream reservation requests were perhaps the most controversial aspect of the process. The Department of Fish and Game and the Department of Health and Environmental Sciences had requested 8.2 million acre-feet/year and 6.6 million af/y, respectively, at Sidney, near the North Dakota border and the mouth of the Yellowstone, where annual flows average 8.8 million af/y. To achieve these instream flows near the mouth, substantial instream reservations were necessary both on the mainstem upstream and on the tributaries. In granting the mainstem reservation of 5.5 million af/y at Sidney, held jointly by these two state agencies, the Board recognized maintenance of water quality, aquatic habitat, and recreational opportunities as a primary concern in the upper basin, while recognizing irrigation as the most important use in the downstream portion of the basin. Accordingly, instream reservations were granted at or near the requested amount above the confluence of the Bighorn River (near Billings) at the expense of irrigation requests. Conversely, instream requests were cut to ensure that irrigation was adequately supplied below the Bighorn River. The priorities among water reservations granted by the Board also reflect this thinking: they are, first, municipalities; second, instream flows upstream of the Bighorn River; third, irrigation; fourth, instream flows downstream of the Bighorn River; and, fifth, multipurpose storage.

The Board also left a portion of the Yellowstone's water unreserved to allow additional water use through normal permit applications.

The Board's decision was not without reaction.

Once adopted, and when the water is put to the designated use, a water reservation becomes a water right. Because of this, many interests felt that the instream reservation could never be lowered, since instream flows would be "in use" immediately. Members of the State Senate, concerned that water development in the state could be unduly restricted, drafted a bill to abolish the reservations altogether when they were only weeks old. While this attempt failed, the Legislature eventually did clearly spell out in the law that the Board has the authority, following a hearing, to reduce instream reservations if it is determined that all or part of the reservation is not required and that the need for the reallocation has been shown to outweigh the need for the original reservation. In addition, the instream minimum flow reservation for gaged streams was limited to a maximum of 50 percent of the average annual flow of record.

In any case, the Board is mandated to periodically review reservations (at least once every 10 years) and may make modifications where objectives are not being met.

AN EXPLORATION OF PROBLEMS SPECIFIC TO THE YELLOWSTONE RESERVATIONS DECISION

To explore more thoroughly the workings of a citizen board involved in a major resource decision, a questionnaire concerning problems and procedures in the Yellowstone case was prepared and sent to members of the Board of Natural Resources. Most of the 25 questions were objective, requesting multiple choice selections or rankings of listed items. A few questions were subjective, requesting short answers. Additional comments were also invited.

All seven members responded. An analysis of the results is made in this section.

Volume of Information

The Board was faced with an overwhelming amount of information, including a two-volume, 697-page draft environmental impact statement with a 67-page addendum, a 194-page final impact statement, 36 volumes of hearing transcripts consist of several thousand pages, and numerous exhibits and attachments including technical documents and studies incorporated by reference. The two days of final arguments resulted in 604 pages of transcript; about 20 of the parties to the reservations prepared proposed findings, which varied in length from just a few pages to as many as 500. Finally, the order of the Board itself (i.e., its final decision) consisted of 374 pages. Five of the Board members believed that this volume of information was either extremely or somewhat excessive.

The mass of material also contributed in varying extents to the difficulty of all members in reaching a decision.

A concern voiced was the general inability of the parties to briefly make a point or draw a conclusion, leaving the Board to consolidate and piece information together. One member mentioned that, "The flood of written information was but a mass of undigested matter to me until I got down to organizing it for myself." However, the proposed orders (findings) were cited as being of considerable help, because here the applicants had to condense information and clarify their positions.

Adequacy of Information

Even with a large volume of information, key data were lacking. One member described the materials as "Much chaff, little wheat," and the majority of the Board felt that this deficiency added to their difficulty in making a decision.

Most found that too little was known about any of the legal questions, including the extent of existing rights of water users in Montana; one member expressed the concern that, "Because of insufficient information on some of these [legal questions] we may be in trouble down the road."

Similarly, most Board members felt that the information presented in several technical areas (specifically, the hydrologic data and the municipal and industrial requirements and demands) was inadequate. One wrote, "Most of the [agricultural] percent depletion values and AF/Acre/Year were guesstimations"; another noted, "Most of the city applications and data were based on certain assumptions unsubstantiated by actual data."

Complexity of Information

Much of the material presented to the Board was technically complex. The hydrologic data, including hydrographs, percentile flows, and computer modeling of flows and conditions (see Appendix A for three examples), were clearly indicated to be the most complicated. One, who termed the hydrologic data "... badly confused for me," found it necessary to prepare additional data tables for the use of the Board from basic U.S. Geological Survey records.

Montana water law, biological instream requirements, and water quality data were, not surprisingly, considered complex by several Board members. It should be noted, with regard to instream flow reservations, that the methodology used to support the application for aquatic life purposes differed substantially from that used to support the water quality request, and still a third methodology (historic minimum flows) formed the basis for a third instream recommendation. Consequently, with applicants using different methodologies and each attempting to support its full request, the results and testimonies, although each was scientifically sound in itself, were highly contradictory of each other.

In contrast, the Board unanimously believed the information on agricultural and municipal requirements was easy to understand.

Overall, six of the seven members felt that the complexity of the technical material and legal issues made the decision more difficult. An illustrative comment was, "For several of the BNR members, I feel that significant parts of [the] technical information were beyond or outside their areas of experience and competence. This is not a criticism — just a fact." Another member remarked, "I think there was a lot some of us didn't understand."

On the other hand, it is apparent that the diversified backgrounds and experiences of its individual members were helpful to the Board. One wrote, "The varied background of the Board members made me somewhat comfortable with the competence of the total Board to deal with the technical complexities." Another said, "In reality, this diversity is one of the strengths of such a Board," while a third commented, "... under the circumstances the Board did the best job possible in dealing with this complex issue."

Time Requirements

As anticipated, devoting the time required to the Yellowstone reservations case posed a real problem (rated "extreme" or "moderate") for all but one Board member. Three declined to estimate the total hours expended; the average time for each of the others was over 200 hours, and the figures presented were noted by several to probably be low. Reviewing written materials took most of the time (60 percent to 75 percent) for the majority (4) of the Board. The hearing itself, however, was apparently not particularly demanding; those members who attended spent an average of 17 hours each; one did not attend at all.

Five of the seven felt that earlier involvement would have made the final decision easier, but there appears to be no consensus as to how this could be accomplished. One member mentioned the difficulty of achieving early involvement while avoiding the possibility of *ex parte* communications.

Lack of Staff

In that the Department of Natural Resources was an applicant, it legally could not perform its usual role as staff for and adviser to the Board.

Board members were of the unanimous opinion that technical and legal staff support would have been helpful. Most (4) rated the lack of staff as extremely difficult, while one remarked specifically that, "The lack of advice from a qualified hydrologist put us at a disadvantage." Six of the members felt strongly enough to add comments on this point, generally to the effect that the Department should serve as the Board's technical staff and therefore should not be an applicant (or an adversary party) in such matters. One, however, suggested that a technical staff be hired to be directly responsible to the Board.

Value of Sources

The environmental impact statement and the hearing transcripts, although the most voluminous of the written materials, were also considered the most valuable. The EIS was ranked the best source of information by four Board members and second best by two; one commented that, "The EIS prepared by DNRC did help considerably in pulling a lot of items together. . . ." Transcripts ranked second overall as a valued information source. The least valued source, of the seven choices presented, was the media, including newspaper and television presentations.

Clear rankings of value can also be assigned to the various sources of verbal information: first, Board work sessions; second, final arguments; and, third, attendance at hearings. "Discussion with [the] general public" received only one of a possible seven votes, and that only as third most valuable.

Conflicting State Agency Positions

As mentioned, four state agencies were applicants for water reservations. One sought a storage project; another, future irrigation of state-owned lands. The third requested in-stream flows to maintain water quality, while the fourth desired different in-stream flows for aquatic life and water-based recreation.

These applications competed for available water. Also, the Department of Natural Resources, in its proposed order to the Board, made recommendations concerning all proposed reservations in amounts which differed from the quantities requested by the

other applicants, including the other agencies. Consequently, state agencies were at odds with one another's positions.

The Board was asked if a unified state agency position would have been desirable. Since four said "Yes" and three said "No," no conclusion can be reached. Those favoring a consolidated position offered these comments:

- *If the state has a policy or program position on the use of natural resources, it should be a coordinated position. If conflicting experts can't get together, how can conflicting interests?*

- *Ridiculous to have all state agencies aggressively opposing one another.*

- *Yes, but I am not sure it is possible. Different state agencies are set up for different goals which are often in conflict with others.*

- *Some of the interagency bickering was silly, foolish, and ridiculous. While each agency has its own legal responsibilities, there should be some conflict resolution ahead of time.*

The three who answered "No" offered these explanations:

- *The interests and legal obligations of each agency are brought out best by each agency presenting its own case.*

- *The decision should be the Board's. A compromise position of the agencies would in effect be a decision.*

- *A unified position would probably have made the decision easier; however, with the complexity of the issues and the different responsibilities of the various agencies, I do not believe that a unified position would be desirable.*

Miscellaneous Problems

A number of additional problems, although not specifically addressed by the questionnaire, were pointed out in comments offered by the Board.

The most prevalent of these, mentioned by four members, might be termed "hearing legalese above and beyond the call of duty." One noted, "The seemingly endless hearings produced much worthless written material. The transcripts of the hearings are full of repeated statements of various 'party lines' which take time and fill paper and contribute nothing to the decisionmaking process"; another complained that the ". . . repetitive, endless arguments entered by the lawyers wasted a lot of time and money." Board members also suggested solutions: "A much simplified hearing with legal wrangling kept to an absolute minimum," ". . . the repetitious legal detail can be reduced," and, quite succinctly, "Less legal foreplay, byplay - and replay."

Three of the Board mentioned the awareness of some applicants and the incompleteness of applications. The problem was identified in remarks like the following:

- *Most of the applications were so thin and data-deficient. . .*

- *I was not convinced that some applicants knew the importance of the process and did not provide pertinent information that they could have.*

Solutions varied: one suggested that ". . . applicants must be much more careful and thorough in their applications in supplying data, and DNR should bounce those back that are inadequate . . ." while another felt, to the contrary, that "Applicants needed expert help. The Department . . . should provide technical guidance to the applicants."

Several concerns were mentioned by only one Board member each. These included the need ". . . to avoid [the] quagmire of details . . ." and concentrate on "Big Picture"

considerations, the need to avoid the bulk of effort at the end either by doing ground-work earlier or by somehow segmenting the decision process, the lack of familiarity with the geographical area, the lack of adequate pay or recognition, and the lack of standardization in the terminology, style of raw data presentations, etc.

Impermanence of Decision

One questionnaire item asked whether future Boards would substantially amend the present allocations. The response was divided about equally among "Yes," "No," and "No Opinion." This result may have been skewed by the unfortunate inclusion of the word, "substantially," since two members commented to the effect that amendments were expected, but would not be "substantial." The possibility of major revisions — for instance, when Yellowstone Compact, Indian, and Federal reserved claims are clear — was acknowledged, but there was no evidence to indicate that the likely impermanence of its laborious final decision bothered the Board.

Magnitude of Responsibility

Obviously, the Board had shouldered a ponderous amount of responsibility in the time and effort spent to reach a final decision. "It is a tremendous burden to place on an unpaid Citizen Board," was one comment received.

Yet, it is interesting to note that no Board member categorized the responsibility as "Excessive and unreasonable." Six of the seven characterized their duty as "Difficult but manageable," while the remaining member felt the task was "Reasonable and fair." No one chose to describe the responsibility as being "Easy."

BASIS FOR YELLOWSTONE DECISION

On what basis, then, does a citizen board faced with numerous problems make a natural resource decision of such magnitude and import?

According to the response to the questionnaire on Yellowstone reservations, technical considerations were clearly the most important factor. Legal issues were ranked second in significance, particularly existing Montana water rights and allocations of interstate waters under the Yellowstone Compact. (Several members indicated that the other legal issues, which were Federal and Indian reserved rights and possible claims of downstream states, were virtually ignored, but primarily because virtually nothing was known about them.) "Public opinion and pressure," the only other choice presented, was assigned a low ranking by three Board members and apparently thought, by the remaining four, to be of no value whatever; however, use of the word, "pressure," may have colored the results.

Several members suggested that additional considerations helped formulate their decisions. For instance, a less tangible factor which figured quite heavily was variously described as "Experience and personal judgment," "Personal experience and philosophy," and "One's own broad philosophy and personal viewpoint." Specifically cited was the "Effect on future growth of Montana."

A sense of fair play is evidenced by the following quote:

I felt an obligation to all applicants to try to meet reasonable demands and to still have unallocated water for future users of all sorts. I further had little use for the real greed shown by some applicants.

The same person expressed the desire for equitable treatment of industrial users, who are not eligible for reservations:

... it may have been helpful if we had known in somewhat more detail what the industrial plans were. We hedged our bets on that by leaving considerable quantities of water unallocated and unreserved, at least in the 50 percentile flow years... the offstream storage applications [approved] were further evidence of concern that we not freeze out future industrial use of water.

The overall importance of such concerns was hinted at by one Board member who wrote, "I felt all members had some strong convictions which influenced their final decision."

BROADER QUESTIONS ABOUT CITIZEN BOARDS

Montana laws, like those in other states, have charged citizen boards with many kinds of major natural resource decisions, thereby entrusting them with imposing responsibilities for the present well being and future direction of the state. Practical and philosophical questions then arise concerning the nature, role, and propriety of such bodies as decision-makers. We can discuss these only in the context of our own experiences with the Department of Natural Resources over the past eight years.

One observation concerns the apparent proliferation of citizen bodies attached to government agencies.

One of the purposes of the 1971 reorganization of the Montana executive branch was to reduce the number of departments, boards, commissions, and committees. The functions of several such entities were consolidated at that time within the new Department of Natural Resources, to which were attached two quasi-judicial Boards. By 1977, three advisory councils had been added, one of these went out of existence in 1978. This year, however, eleven new advisory groups have been or are being formed.

Not counting those boards and committees which work with several agencies, including this Department, there are now fifteen citizen groups which deal solely with this Department.

Most of these, however, exist only to advise on a single issue or program. More relevant to this discussion are the questions surrounding those boards which actually make the final administrative decisions in resource matters.

1. First, are boards able to deal with the complex technical questions central to most resource issues?

Citizen boards obviously do not and cannot include professionals in every discipline factoring into every decision. According to the Yellowstone reservations questionnaire, as we've mentioned, many members of the Board of Natural Resources felt this problem to be alleviated by relying on those members who do possess some scientific expertise, and on the Department. As one quoted, "This is another instance, however, of the advantage of having the DNRC staff as a technical support staff to provide unbiased interpretation of technical matters."

However, the Board is an independent body with no intention of rubber stamping the Department's work. In some cases, notably certain decisions under Montana's Major Facility Siting Act, the Board has rejected the Department's recommendations, but it is not known whether this resulted from a perception of errors on the part of the Department's technical staff, bias on the part of the Department, greater credibility on the part of the experts representing other parties, the desire to balance other factors along with technical matters, or some other reason.

2. Second, are citizen boards adequately compensated for their service?

Demands on members can be staggering, conceivably to the point of detracting from their individual means of livelihood. Yet, in Montana, only travel and the days of attending meetings are compensated. One member remarked:

The immense amount of time required (and the . . . lack of even peanuts compensation) really asks a great deal of a citizen board member . . . There at least should be some recognition and some compensation of the many hours one spends on cases between actual Board meeting days.

On the other hand, if boards were fully paid — and especially if, as one member suggested, they were furnished their own salaried staff — would we not be creating another layer of government, a duplicate department resting atop an existing department? Is the value of a citizen board somehow inextricably intertwined with the fact that members do serve in a volunteer capacity?

3. Third, are citizen boards accountable?

Since they are not elected, they cannot be held accountable through the process of recall, or by being voted out of office at the next election. Although in Montana members are appointed and can be removed for cause by the Governor, boards function as autonomous units, carefully independent of the Governor's influence. Should their decisions be challenged in court, liability accrues to the state — that is, to the taxpayers of Montana — not to the individual board members.

4. Next, do citizen boards represent the public?

In one sense, boards are the public, in that they consist of a diverse array of private citizens.

On the other hand, little effort is typically made to assess the feeling of the general populace through surveys or other formal methods. In addition, analyzing the results of the Yellowstone questionnaire, "Discussion with [the] general public" was not valued as a source of information, "Public opinion and pressure" was not an important factor in the decision, and "Public interest or pressure" posed no difficulty for six board members and only slight difficulty for the seventh — although, again, it should be noted that the wording may have biased the response. One member mentioned giving "... citizens their right to be heard"; another said, of public opinion, that it's "Important to tap this, even though only rarely did specific constructive ideas and data come from this source"; still another noted, "The only people who really want to talk about it are those who have something to gain so I try to skip this."

Board members' views of the public-at-large may be further illuminated by their reaction to the prospect of deciding resource issues by popular referendum, a topic discussed later.

5. Given the magnitude and deeply controversial nature of certain resource decisions, it is not surprising that many eventually appear on courtroom dockets. Another question, then, concerns whether proceedings before a citizen board best prepare a case for judicial action.

Lengthy legal maneuvers were a repeated complaint in the Yellowstone proceedings, although Board members probably are aware of a deliberate effort by attorneys to prepare a strong foundation. One wrote, "I do realize that they [the lawyers] were merely 'building a record' for possible future legal use, but they certainly overdid that."

If procedures before boards are simplified and condensed, as has been proposed, will records be sufficient for use by the judiciary? Will the burden of establishing fact and detail simply be transferred from one forum to another forum which may already be overburdened? Is there merit to the alternative of laws empowering an executive branch agency headed by a single person to make such decisions, with a board then acting in a first-level appellate function?

ALTERNATIVE DECISIONMAKERS

The real question, in the last analysis, is this: Who is best able and best suited to decide complex and momentous natural resource issues?

The majority (5) of the Board of Natural Resources believe that citizen boards are the most appropriate. One commented that:

A citizen board system is a good one, provided —

- (a) that the Governor appoints on the basis of abilities and not for political reasons*
- (b) that the legislature sets clear policy and legal lines*
- (c) that the state agencies (here DNR) act as technical staffs for a citizen board.*

Another cautioned, "... the Board should be careful that the nonmembers are not making the decisions."

The other two members of the Board are of the opinion that such issues are best decided by the Legislature.

Next favored was the appropriate executive branch agency, which was ranked the second-best decider by four of the Board. The Governor evidently was not seen as a suitable resource decisionmaker, although that possibility was considered preferable to decisionmaking by popular referendum, which ranked lowest among the choices presented. The judiciary was not listed as an alternative, nor was it suggested by any Board member.

A few quotes help illustrate the reasoning of the Board:

- The Governor and the legislature are too political. . .*
- I assume the Governor would make his preference known through the appropriate state agency or by approval or veto of legislative action.*
- The action of the recent Senate showed that they do not understand the issues.*
- Popular referenda on highly technical matters would by no means necessarily produce sound long range decisions.*
- A referendum would not be feasible as the issue is too complex for the public to understand.*
- Popular referendum sometimes brings out a lot of hysteria and falsehoods which very often are hard for the general public to weed out.*

The suggestion that different bodies could make different kinds of major resource decisions was not met with much enthusiasm. One member agreed, noting that "...very often different bodies are knowledgeable on different topics." Another wrote, "Bodies that have some expertise concerning the resource under consideration should have primary responsibility as far as practical."

CONCLUSION

Having raised and explored these questions surrounding citizen boards as resource decisionmakers, we find we have no real answers. Any conclusions that could be drawn from an analysis of the Board of Natural Resources' own perception of its situation in the Yellowstone water reservations case would probably have little validity in relation to the same Board deciding a different issue, and it would be erroneous to attempt to extrapolate this situation to that of another board deciding any other issue.

We can observe, however, that citizen boards are usually dedicated, conscientious, and hardworking. They are acutely sensitive to the significance of their actions; one wrote:

Right now the main concern of the nation is oil but it won't be for long before the general public realizes how critical an adequate supply of clean water is to the future welfare and development of our country.

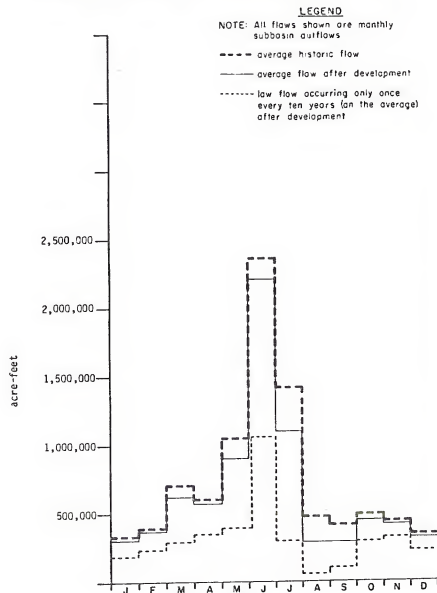
The demands for their time and effort can be extraordinary and exhausting: one lamented, "Going through this hearing was an education to all of us." Yet, they treasure and almost jealously guard their responsibility and authority. And they are effective: decisions are indeed reached.

A final observation is that, given the kinds of decisions entrusted by law to citizen boards and the nature of and difficulties encountered by such boards, it is incumbent upon state agencies to facilitate their deliberations. Those of us working with boards can and should make a conscious effort to:

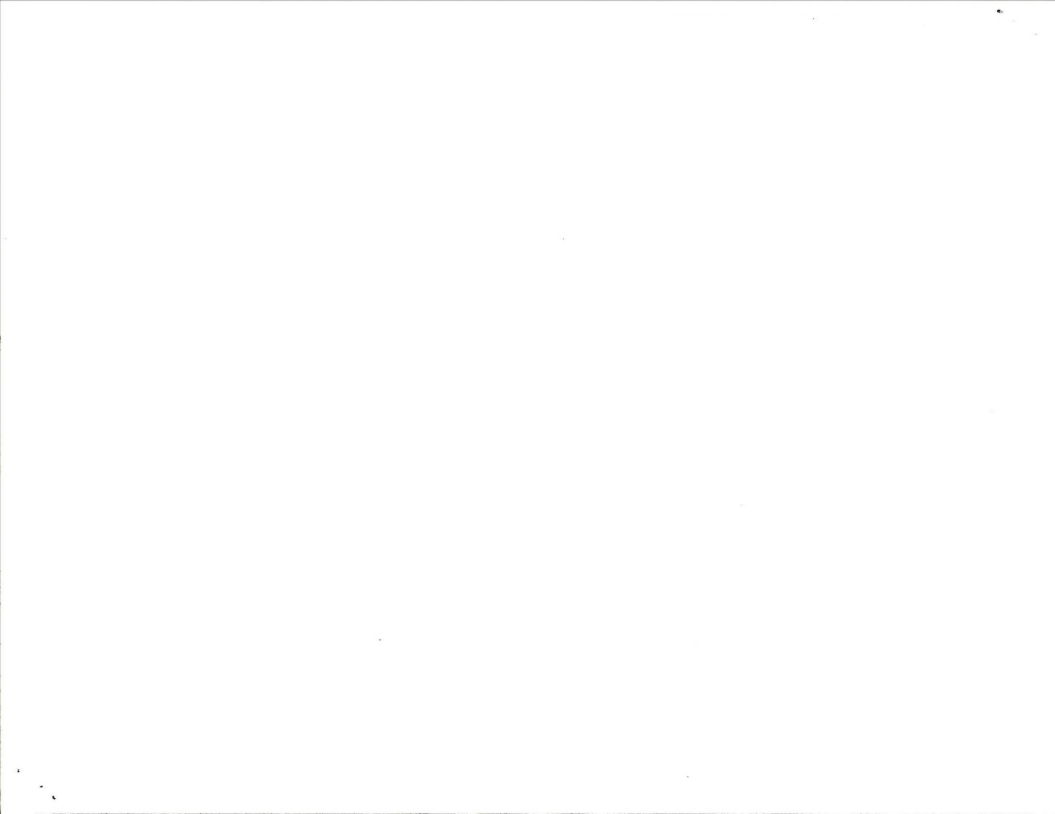
1. Standardize terms, abbreviations, kinds of information required, and format and units of measure for data presentations through careful rules, regulations, or specifications.
2. Familiarize board members with the geographical area affected, the general subject matter, and the major issues.
3. Recognize the importance of the EIS as a decisionmaking tool and improve its usefulness, possibly by reducing the volume of information, de-emphasizing details, and focusing on larger considerations.
4. Provide technical staff or the assistance needed in other matters.
5. Simplify, shorten, and expedite hearings.

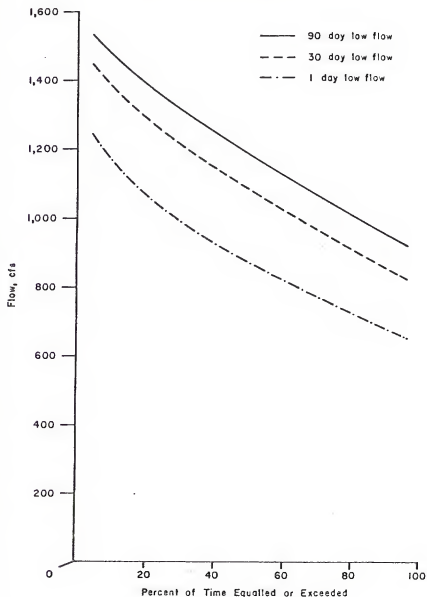
We can also try to achieve diversity, expertise, and broad representation in the selection and makeup of the board itself. Perhaps most helpful, we can work to establish or clarify, at the state level, those long term resource goals and policies which should serve as the framework within which unique decisions by boards can be wisely made.

Appendix A EXAMPLES OF PRESENTATIONS OF HYDROLOGIC DATA

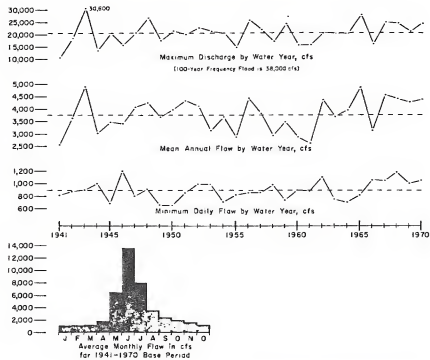


Lower Yellowstone River Subbasin Monthly Outflows for the High Irrigation Emphasis Alternative.





Low Flow Duration Curves, Yellowstone River Near Livingston
(Period of Record 1897-1973).



Yellowstone River Near Livingston, Yellowstone River Basin, U.S.G.S. Station No. 06192500,
Drainage Area 3551 sq. mi. (Period of Record 1897-1905; 1928-1932; 1937-1970).

